FILE COPY

Office-Supreme Court, U.
FILED
JUN 12 1959
JAMES R. BROWNING, C

IN THE

# Supreme Court of the United States

October Term, 1958

No. 893

MICHELE MIRANDA,

*Petitioner,*

—against—

THE COMMISSION OF INVESTIGATION OF THE STATE OF NEW YORK, by MYLES J. LANE, Chairman, JACOB GRUMET, JOHN W. RYAN, JR., GOODMAN A. SARACHAN, Commissioners,

*Respondent.*

## PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

ABRAHAM H. BRODSKY
111 Broadway
New York 6, New York

HARRIS B. STEINBERG
25 Broad Street
New York 4, New York
*Attorneys for Petitioner*

HARRIS B. STEINBERG
LEO H. HIRSCH, JR.
*of Counsel*

...52 ...Press Inc., 82 Beekman St., N. Y.—BEekman 3-2005

## TABLE OF CONTENTS


| | PAGE |
|---|---|
| CONCLUSION | 8 |
| INDICTMENT | 9 |

CASES

| | |
|---|---|
| Brown v. Board of Education (1952) 344 U. S. 1, 3 | 5 |
| Cooke v. United States (1925) 267 U. S. 517, 537 | 5 |
| Home Insurance Co. v. Dick (1930) 281 U. S. 397, 407 | 2 |
| Knapp v. Schweitzer (1958) 357 U. S. 371 | 2, 4 |
| Mills v. Louisiana (Nos. 74, 75, Oct. Term 1958) —— U. S. ——, decided June 8, 1959 | 2 |
| Sully v. American National Bank (1900) 178 U. S. 289, 298 | 2 |
| U. S. v. Murdock, 284 U. S. 141 (1931) | 4 |
| Wells v. U. S. (1943) 318 U. S. 257, 260 | 5 |
| Whitfield v. Ohio (1936) 297 U. S. 431, 435-436 | 1-2 |

STATUTES

| | |
|---|---|
| New York Civil Practice Act: | |
| Section 406, Subdivision 13 | 7 |
| N. Y. Laws 1958, Ch. 989: | |
| Section 2, Subdivision 5 | 2, 3 |
| Section 2, Subdivision 7 | 3 |
| United States Constitution: | |
| Fifth Amendment | 1, 3 |
| Eighth Amendment | 1 |
| Fourteenth Amendment | 1 |

IN THE

# Supreme Court of the United States

**October Term, 1958**

**No. 893**

---

MICHELE MIRANDA,

*Petitioner,*

—against—

THE COMMISSION OF INVESTIGATION OF THE STATE OF NEW YORK, by MYLES J. LANE, Chairman, JACOB GRUMET, JOHN W. RYAN, JR., GOODMAN A. SARACHAN, Commissioners,

*Respondent.*

---

## PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

1. Respondent states (Br., p. 10) that petitioner did not raise in the lower New York courts the contention that the over-all effects of the proceedings in the New York State Supreme Court violated the Fifth, Eighth and Fourteenth Amendments, United States Constitution. This question was presented by petitioner in the New York Court of Appeals, and passed on by that court, as clearly appears from its order amending its remittitur. Accordingly, this court may consider it. (*Whitfield* v. *Ohio* [1936] 297 U. S. 431,

435-436; *Home Insurance Co.* v. *Dick* [1930] 281 U. S. 397, 407; *Sully* v. *American National Bank* [1900] 178 U. S. 289, 298.)

2. Respondent also states (Br., p. 10) that petitioner never complained of the procedure by which the respondent *Commisison* conducted its hearings. This is true. Petitioner's complaint is of the action of the State *court* in granting an order incarcerating petitioner, and the precipitate manner in which the order was granted on respondent's request.

3. Respondent argues (Br., p. 12) that if petitioner's position is sustained, the states would, in effect, be foreclosed from ever conferring immunity, since New York has done all that it can in conferring valid immunity under New York law. This is inaccurate. Our argument is limited to cases (a) where the State body granting immunity is mandated by statute to investigate federal crimes; (b) where the witness is in actual, demonstrable danger of federal prosecution for the acts concerning which the State body is conducting its inquiry; and (c) where a federal official is present at the State inquiry. All these factors are present here. None of them was present in *Knapp* v. *Schweitzer* (1958) 357 U. S. 371, or in *Mills* v. *Louisiana* (Nos. 74, 75, Oct. Term 1958) —— U. S. ——, decided June 8, 1959.

4. Respondent would have it appear (Br., p. 13) that Section 2, Subdivision 5, of the Act establishing the Commission (N. Y. Laws 1958, Ch. 989), in requiring cooperation with federal authorities, merely means that the Commission shall turn over to such federal authorities evidence

of federal crimes discovered "incidentally during the course of the Commission's investigation into state matters." Respondent neglects to mention that Section 2, Subdivision 7, of that statute establishes a mandatory duty upon the Commission not only to "cooperate" with the federal authorities, but to "refer the evidence of such [federal] crime or misconduct to the officials authorized to conduct the prosecution." In other words, the respondent's position is that Section 2, Subdivision 5, merely *means* what Section 2, Subdivision 7, *says*. If that were so, there would be no necessity for enacting Section 2, Subdivision 7.

This is not a question of comity, but one of mandatory duty—a far different thing.

The foregoing fact would appear to be an answer to the respondent's contention (Br., p. 14) that the oath of office of the Commissioners to support and defend the federal Constitution necessarily implies "cooperation" with federal officers. The statutory mandate here goes far beyond the well understood concept of "cooperation," which may be held to be in the State officer's discretion. We submit that this unique type of statute should be held to constitute the State body an "instrumentality" of the federal government. In such event, a claim under the Fifth Amendment may properly be raised before the *State* body.

5. Respondent complains (Br., pp. 14-15) that the record contains no facts showing that the State body was being used as a federal "instrumentality". We submit that the facts in the record, summarized at pages 13 and 14 of the petition herein, adequately demonstrate such a conclusion. If there is any deficiency in the record, it is attributable to the precipitate haste with which the proceedings in the

State court of first instance were conducted, and to the denial of petitioner's request for an opportunity to submit answering affidavits (891).

6. Respondent states (Br., p. 15) that "A real danger of prosecution by a second sovereign was implicit in both *Knapp* v. *Schweitzer*, 357 U. S. 371 (1958) and *U. S.* v. *Murdock*, 284 U. S. 141 (1931), and both considered this factor inconsequential." We submit that this is not an accurate interpretation of the two cases. In *Knapp* v. *Schweitzer*, *supra*, 357 U. S. 371, 380, Mr. Justice FRANKFURTER said that "petitioner's assertion that a federal prosecuting attorney announced his intention of cooperating with state officials in the prosecution of cases in a general field of criminal law presents a situation devoid of legal significance as a joint state and federal endeavor." * In *U. S.* v. *Murdock*, *supra*, 284 U. S. 141, the

---

* A complete refutation of the respondent's contention that the *Knapp* case involved a "real danger of prosecution by a second sovereign" (Br., p. 15) is found in the fact that the District Attorney's brief in that case went to great lengths to develop the fact that there was no evidence of any substantial danger of federal prosecution in that case (District Attorney's brief, *Knapp* v. *Schweitzer*, in this Court, pages 9-10, 11, 17, 18):

> "Although there may be cases in which real and impending cross-jurisdictional danger might be shown, no such situation here obtains" (pp. 9-10).
>
> * * *
>
> "Thus, completely protected in New York, the witness faces only the bare possibility of jeopardy in some other jurisdiction" (p. 11).
>
> * * *
>
> "It is conceivable that a case of substantial danger might arise by virtue of certain extraordinary circumstances, such as the pendency or actual commencement of a foreign criminal proceeding against a person, based upon the very matters about which a grand jury or other agency is contemporaneously interrogating him.

Court said, at page 149, "Nothing of state concern was involved."

In sharp contrast with the cited cases is the situation in the instant case. Not only does the record show that petitioner was in real and imminent danger of federal prosecution, but *such federal prosecution has actually eventuated and he has been indicted in the United States District Court for the Southern District of New York.* A copy of such indictment, of which this Court may take judicial notice (*Brown* v. *Board of Education* [1952] 344 U. S. 1, 3; *Wells* v. *U. S.* [1943] 318 U. S. 257, 260), is appended hereto. It will be noted that petitioner was indicted for an alleged conspiracy to obstruct federal justice by preventing federal authorities from investigating the same meeting which the State Commisison was investigating, and that overt acts alleged in the indictment include false statements by petitioner and others to State authorities. (See p. 16, *infra.*)

Yet respondent speaks (Br., p. 15) of "the danger of prosecution for reasons unrelated to state action"!

7. Respondent says (Br., p. 16) that the basic requirements of procedural due process are jurisdiction, notice and hearing. Included in the concept of notice and hearing is "a reasonable opportunity to meet" the charges. (*Cooke* v. *United States* [1925] 267 U. S. 517, 537.) That oppor-

---

Here, however, nothing of this nature appears, * * *" (p. 17).

* * *

"It seems clear that the petitioner, unable to show any real danger of federal prosecution, has erected a phantom peril in the form of the aforementioned general 'policy'. The fears expressed by the petitioner on this score seem conveniently assumed, highly illusory and, indeed, purely in the nature of an afterthought" (p. 18).

tunity was denied to petitioner herein. Petitioner's complaint is not of "a minute point of state civil procedure", as respondent claims (Br., p. 16), but of an essential element of due process.

8. Respondent states (Br., p. 18) that petitioner chose to appear specially in the state court and thereby waived his right to introduce evidence. The record, on the contrary, shows that petitioner's counsel appeared specially solely to protest the short notice and specifically requested an opportunity to submit answering affidavits. He said (890-1):

> "I am appearing specially, if your Honor please, and I want to ask for an adjournment upon the ground that this order to show cause was served upon the respondent at two o'clock at 100 Centre Street. It was made returnable forthwith.
>
> It is now 2:38, and I have not had the opportunity, if your Honor please, for the purpose of making a complete record, of submitting answering affidavits in opposition thereto, and, therefore, I respectfully ask for an adjournment, a reasonable adjournment, so that I may be afforded the opportunity to do so."

9. Respondent contends (Br., p. 18) that the issues of law involved herein are "simple and readily resolved." The complexity of such issues is indicated by the fact that the Appellate Division took two months to decide the case (985, 967), wrote a lengthy opinion, and then certified that there were questions of law involved which should be reviewed by the Court of Appeals (983).

10. Respondent argues (Br., p. 18) that petitioner was not denied due process because he raised no material issues

of fact. Petitioner's claim is that he was deprived of due process because he was denied an opportunity to raise such issues by answering affidavits.

11. Respondent states (Br., p. 19) that the only issues under New York Civil Practice Act, Section 406, Subdivision 13, are whether the witness was sworn and asked certain questions, and whether he refused to answer. Respondent overlooks the fact that under that statute a stated prerequisite to judicial action is that the refusal to answer be "without reasonable cause" (see text of statute reprinted at page 39 of the petition herein). Petitioner contends that the claimed violation of his constitutional rights gave him reasonable cause not to answer.

12. Finally, respondent argues (Br., p. 19) that the procedural issue herein "is of very limited applicability". Yet, in its "First Report to the New York Governor and Legislature," quoted in the footnote on page 10 of the petition herein, respondent stated that "the importance of the decisions [of the New York Courts herein] cannot be emphasized too strongly," and that by its proceedings respondent "has accomplished much in establishing a new and aggressive approach with respect to underworld characters who refuse to give testimony." It is true that this approach is aggressive and new, but its propriety is a matter of first importance which should be passed upon by this Court.

## CONCLUSION

**The petition for certiorari should be granted.**

ABRAHAM H. BRODSKY
HARRIS B. STEINBERG
*Attorneys for Petitioner*

HARRIS B. STEINBERG
LEO H. HIRSCH, JR.
*of Counsel*

June, 1959.

# INDICTMENT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

*v.*

JOSEPH BONNANO
RUSSELL A. BUFALINO
IGNATIUS CANNONE
PAUL C. CASTELLANO
JOSEPH F. CIVELLO
FRANK CUCCHIARA
JOHN A. DEMARCO
FRANK A. DESIMONE
NATALE EVOLA
SALVATORE FALCONE
JOSEPH IDA
JAMES V. LA DUCA
LOUIS A. LARASSO
CARMINE LOMBARDOZZI
ANTONIO MAGADDINO
JOSEPH MAGLIOCCO
FRANK T. MAJURI
MICHELE MIRANDA
JOHN C. MONTANA
JOHN ORMENTO
JAMES OSTICCO
JOSEPH PROFACI
ANTHONY P. RIELA
JOHN T. SCALISH
ANGELO J. SCIANDRA
SIMONE SCOZZARI
PASQUALE TURRIGIANO,

Defendants

**INDICTMENT**

**Title 18,
United States Code,
Sections 371, 1621**

*Indictment*

The Grand Jury Charges:

1. That commencing on or about the 14th day of November 1957, and continuously thereafter up until the date of filing this indictment, at the Southern District of New York, JOSEPH BONANNO, RUSSELL A. BUFALINO, IGNATIUS CANNONE, PAUL C. CASTELLANO, JOSEPH F. CIVELLO, FRANK CUCCHIARA, JOHN A. DEMARCO, FRANK A. DESIMONE, NATALE EVOLA, SALVATORE FALCONE, JOSEPH IDA, JAMES V. LA DUCA, LOUIS A. LARASSO, CARMINE LOMBARDOZZI, ANTONIO MAGADDINO, JOSEPH MAGLIOCCO, FRANK T. MAJURI, MICHELE MIRANDA, JOHN C. MONTANA, JOHN ORMENTO, JAMES OSTICCO, JOSEPH PROFACI, ANTHONY P. RIELA, JOHN T. SCALISH, ANGELO J. SCIANDRA, SIMONE SCOZZARI, PASQUALE TURRIGIANO, defendants herein, and Dominic J. Alaimo, Joseph Barbara, Jr., Joseph Barbara, Sr., Giovanni Bonventre, Roy Carlisi, Gerardo V. Catena, Charles Chiri, Nicholas Civella, James Colletti, Dominick D'Agostino, Joseph Falcone, Joseph Filardo, Carlo Gambino, Michael J. Genovese, Vito Genovese, Anthony F. Guarnieri, Bartolo Guccia, Sam Lagattuta, John S. Larocca, Russell V. Mancuso, Gabriel Mannarino, Patsy Monachino, Sam Monachino, Dominick Oliveto, Vincent Rao, Armand T. Rava, Joseph Riccobono, Joseph Rosato, Paul Scarcelli, Patsy Sciortino, Salvatore Tornabe, Santo Trafficante, Jr., Frank J. Valenti, Stanley P. Valenti, Emanuel Zicari and Frank Zito, co-conspirators not defendants herein, did unlawfully, willfully, and knowingly combine, conspire, confederate and agree together, and with each other and with others to the said Grand Jury unknown, to defraud the United States and to commit offenses against the United

States, to wit: to violate Title 18, Sections 1503 and 1621, United States Code.

2. That, further, as the said defendants and their co-conspirators well knew, a special investigation had been commenced by a United States Grand Jury in March of 1956 in the United States District Court for the Southern District of New York into racketeering and criminal syndicates with particular emphasis upon their activities in the ladies' garment and ladies' garment-trucking industry, labor management field, and the narcotics traffic, and has continued before Federal Grand Juries up until the date of the filing of this indictment.

3. During the course of said conspiracy, as the said defendants and their co-conspirators well knew, a meeting of individuals, some of whom were involved in the aforesaid special investigation, was held at the home of Joseph Barbara, Sr., a co-conspirator herein, in Apalachin, New York, on or about November 14, 1957, which was attended by the defendants and their co-conspirators, among others.

4. During the course of said conspiracy, as the said defendants and their co-conspirators well knew, following the aforesaid meeting, Grand Juries of the United States, duly impaneled and sworn in and for the United States District Courts for the Southern District of New York and elsewhere, began conducting an investigation into all of the material circumstances concerning the aforesaid meeting, and issued subpoenas directing the said defendants and their co-conspirators to appear before the said Grand Juries and give testimony and evidence.

5. During the course of said conspiracy, it was the belief of the defendants and their co-conspirators that the individuals who had been present at the aforesaid meeting would be questioned in connection with said investigation concerning the aforesaid meeting, with respect to its purpose, the number and identity of persons who were present, the arrangements preceding the aforesaid meeting, the conversations and other events which took place, and all the other circumstances surrounding the said occasion.

6. It was a part of the said conspiracy that the defendants and their co-conspirators, by false, fictitious and evasive testimony, and by other contumacious conduct, and by the commission of perjury, would conceal from the aforesaid Grand Juries and from other investigating bodies and agencies of the United States the fact that the aforesaid meeting had taken place, the purpose and advance planning of the aforesaid meeting, the number and identity of persons who were present on said occasion, the conversations and other events which took place, and all the other material circumstances surrounding the said occasion.

7. It was a further part of said conspiracy that said defendants and their co-conspirators, having taken oaths before competent tribunals, to wit, said Grand Juries, in matters in which a law of the United States authorizes an oath to be administered, that they would testify truly, would willfully and knowingly and contrary to said oath, state material matter which they did not believe to be true.

8. It was a further part of said conspiracy that said defendants and their co-conspirators would corruptly influ-

ence, obstruct and impede, and corruptly endeavor to influence, obstruct and impede the due administration of justice in the United States District Courts for the Southern District of New York and elsewhere, by giving false, fictitious and evasive testimony and by other contumacious conduct, and by the commission of perjury.

9. It was a further part of said conspiracy that the defendants would give and would corruptly influence the said co-conspirators and others to give false material information about the said meeting to investigating bodies and agencies of the United States, and give false, fictitious, fraudulent, vague, evasive and manufactured material testimony under oath about the aforesaid meeting before the said Grand Juries.

10. It was a further part of said conspiracy that said defendants and their co-conspirators would defraud the United States by impeding, impairing, obstructing and defeating the lawful governmental functions of the United States in the investigation of violations of the laws of the United States and in the collection of information and evidence in matters in which the United States is or may be a party in interest.

## OVERT ACTS

1. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 14th day of November 1957, in the Northern District of New York, JOSEPH BONANNO, a defendant herein, made a statement to members of the New York State Police.

2. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 14th day of November 1957, in the Northern District of New York, JOSEPH F. CIVELLO, a defendant herein, made a statement to members of the New York State Police.

3. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 14th day of November 1957, in the Northern District of New York, FRANK CUCCHIARA, a defendant herein, made a statement to members of the New York State Police.

4. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 14th day of November 1957, in the Northern District of New York, JOHN A. DEMARCO, a defendant herein, made a statement to members of the New York State Police.

5. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 14th day of November 1957, in the Northern District of New York, SALVATORE FALCONE, a defendant herein, made a statement to members of the New York State Police.

6. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 14th day of November 1957, in the Northern District of New York, JOHN T. SCALISH, a defendant herein, made a statement to members of the New York State Police.

7. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 14th day of No-

vember 1957, in the Northern District of New York, JAMES V. LA DUCA, a defendant herein, made a statement to members of the New York State Police.

8. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 14th day of November 1957, in the Northern District of New Jersey, JAMES OSTICCO, a defendant herein, made a statement to members of the New York State Police.

9. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 18th day of November 1957, in Newark, New Jersey, ANTHONY P. RIELA, a defendant herein, made a statement to officers of the New Jersey State Police and the Newark Police Department.

10. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 19th day of November 1957, in Nassau County, Mineola, Long Island, New York, JOHN ORMENTO, a defendant herein, made a statement to representatives of the District Attorney's Office, Nassau County.

11. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 20th day of November 1957, in New York City, NATALE EVOLA, a defendant herein, made a statement to officers of the New York City Police Department.

12. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 21st day of November 1957, in New York City, PAUL C. CASTELLANO, a

defendant herein, made a statement to officers of the New York City Police Department.

13. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 22nd day of November 1957, in New York City, CARMINE LOMBARDOZZI, a defendant herein, made a statement to officers of the New York City Police Department.

14. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 23rd day of November 1957, in New York City, MICHELE MIRANDA, a defendant herein, made a statement to officers of the New York City Police Department.

15. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 2nd day of December 1957, in Niagara Falls, New York, ANTONIO MAGADDINO, a defendant herein, made a statement to a representative of a subcommittee of the Joint Legislative Committee on Government Operations in New York State.

16. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 3rd day of December 1957, in Elizabeth, New Jersey, LOUIS A. LARASSO, a defendant herein, gave testimony to the County Court of Union County, New Jersey.

17. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 3rd day of December 1957, in Elizabeth, New Jersey, FRANK T. MAJURI, a defendant herein, gave testimony to the County Court of Union County, New Jersey.

18. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 27th day of January 1958, in Philadelphia, Pennsylvania, RUSSELL A. BUFALINO, a defendant herein, gave testimony at an Immigration and Naturalization Service hearing.

19. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 2nd day of September 1958, in Highland Park, New Jersey, JOSEPH IDA, a defendant herein, made a statement to an officer of the Intelligence Division, Internal Revenue Service, United States Treasury Department.

20. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 17th day of November 1958, in the Southern District of New York, JOSEPH MAGLIOCCO, a defendant herein, gave testimony to one of the aforesaid Grand Juries.

21. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 4th day of December 1958, in the Southern District of New York, Bartolo Guccia, a co-conspirator herein gave testimony to one of the aforesaid Grand Juries.

22. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 8th day of December 1958, in the Southern District of New York, IGNATIUS CANNONE, a defendant herein, gave testimony to one of the aforesaid Grand Juries,

23. In furtherance of the aforesaid conspiracy and to effect to objects thereof, on or about the 9th day of De-

cember 1958, in the Southern District of New York, Emanuel Zicari, a co-conspirator herein, gave testimony to one of the aforesaid Grand Juries.

24. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 13th day of January 1959, in the Southern District of New York, PASQUALE TURRIGIANO, a defendant herein, gave testimony to one of the aforesaid Grand Juries.

25. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 16th day of January 1959, in the Southern District of New York, ANGELO J. SCIANDRA, a defendant herein, gave testimony to one of the aforesaid Grand Juries.

26. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 23rd day of January 1959, in the Southern District of New York, PASQUALE TURRIGIANO, a defendant herein, gave testimony to one of the aforesaid Grand Juries.

27. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 23rd day of January 1959, in the Southern District of New York, JOHN C. MONTANA, a defendant herein, gave testimony to one of the aforesaid Grand Juries.

28. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 24th day of February 1959, in the Southern District of New York, Patsy Monachino, a co-conspirator herein, gave testimony to one of the aforesaid Grand Juries.

29. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 25th day of February 1959, in the Southern District of New York, Patsy Sciortino, a co-conspirator herein, gave testimony to one of the aforesaid Grand Juries.

30. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 25th day of February 1959, in the Southern District of New York, Patsy Monachino, a co-conspirator herein, gave testimony to one of the aforesaid Grand Juries.

31. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 10th day of March 1959, in the Southern District of New York, JOHN C. MONTANA, a defendant herein, gave testimony to one of the aforesaid Grand Juries.

32. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 17th day of March 1959, in the Southern District of California, FRANK A. DESIMONE, a defendant herein, refused to be sworn by a Federal Grand Jury.

33. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 16th day of April 1959, in the Southern District of California, SIMONE SCOZZARI, a defendant herein, gave testimony to a Federal Grand Jury.

34. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 29th day of April

1959, in the Southern District of New York, JOSEPH PROFACI, a defendant herein, gave testimony to one of the aforesaid Grand Juries.

35. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 11th day of May 1959, in the Southern District of New York, Paul Scarcelli, a co-conspirator herein, gave testimony to one of the aforesaid Grand Juries.

(Title 18, Section 371, United States Code.)

## COUNT II

The Grand Jury further charges:

1. That on or about the 17th day of November 1958, at the Southern District of New York and within the jurisdiction of this Court, JOSEPH MAGLIOCCO, defendant herein, having duly taken an oath before a competent tribunal, to wit, the Grand Jury of the United States of America, duly impaneled and sworn in and for the United States District Court for the Southern District of New York, and inquiring for that District in a matter then and there pending before said Grand Jury in which the law of the United States authorizes an oath to be administered, that he would testify truly, did unlawfully, knowingly and willfully and contrary to said oath, state material matter which he did not believe to be true, that is to say:

2. At the time and place aforesaid, the said Grand Jury, inquiring as aforesaid, was conducting an investigation en-

titled *United States v. John Doe*, concerning possible violations of the laws of the United States involved in a meeting held at the home of Joseph Barbara, Sr., in Apalachin, New York, on or about November 14, 1957, as is more fully described in paragraphs 3, 4 and 5 of Count I hereof, the allegations of which relating thereto are incorporated herein.

3. It was material to this investigation to ascertain the purpose of the aforesaid meeting, the names of persons who attended, whether their attendance was planned, and what events occurred thereat.

4. At the time and place aforesaid, the said JOSEPH MAGLIOCCO, appearing as a witness under oath, testified falsely before the said Grand Jury with respect to the aforesaid material matter, as follows:

> Q. You spoke earlier, Mr. Magliocco, about the affair at Mr. Barbara's house in Apalachin, New York, which was held November 14, 1957 and you started to tell us why it was you had gone up there, and I believe I cut you off because I wasn't particularly interested in it insofar as those questions were concerned, but I wish you would tell us now as you were starting to, why it was you were at Mr. Barbara's house on November 14, 1957. A. Well, I tried to tell you before and I tell you now that I didn't know that I was going to Mr. Barbara's house.
>
> Q. Didn't you know you were going there? A. No.
>
> Q. Well, when did you find out you were at Mr. Barbara's house? A. After.
>
> Q. After you had actually arrived there? A. After we left.

Q. Who told you you had been at Mr. Barbara's house? A. A state trooper.

Q. That was the first you had heard of the fact that— A. That I was in Mr. Barbara's house.

* * * * *

Q. And the first time you knew that you had been at Barbara's house was after you had left the following morning and the state troopers stopped you? A. As far as myself was concerned.

* * * *

Q. Tell us what happened when you pulled up to Mr. Barbara's house, what you saw, what Mr. Profaci said to you and what occurred? A. Mr. Profaci asked me if I wanted to go in with him, and I felt the way I feel now. I said, "No, thank you. I don't feel too well. I will stay in the car." Because I had no knowledge of the business that my brother-in-law had to discuss. But I know now that it was Mr. Barbara's house.

* * *

Q. You were at the home of Joseph Barbara on that day? A. Outside, in my car, yes.

Q. As you subsequently learned, there were a lot of other people who had been there on that day. A. After.

Q. Did you see any of those persons when you were at the home of Mr. Barbara? A. I didn't see a soul.

Q. Did you see any automobiles? A. I saw four or five cars and I thought they were the family's cars.

Q. Just four or five automobiles? A. Yes.

Q. You were completely unaware there was a party going on at the house? A. That's right.

* * *

Q. Now, to pick up where we left off, it's my understanding that it's your testimony that you did not know you were going to Mr. Barbara's house and, in fact, were not aware you had been there until you were informed of it after you had left the premises, and that, further, while you were there, you did not see anybody nor were you aware that there was a party going on? A. That's right.

Q. That's a correct statement of your testimony? Yes? A. Yes.

Q. Now, you say you arrived shortly before 12. How long did you stay at Mr. Barbara's house? A. Couldn't be more than about—less than an hour.

Q. It was definitely less than an hour? Could it have been as little as half an hour? A. Could have been. I mean I don't pay attention to it at all. I mean—

Q. Where were you when Mr. Profaci was in the house? A. In the car.

Q. You sat in the car all that while? A. That's right.

Q. Did you see anybody at all, other than Mr. Profaci, going and coming? A. No.

Q. Did you see any cars come in while you were parked there? A. I don't recall.

Q. You cannot recall any cars having come in? A. No.

Q. No? You have to speak a little louder. A. No, I just—the position of where I was standing, I didn't see no one nothing. I mean I was just reading a paper and I was sitting, I mean, I don't know. I didn't pay attention at all, but I couldn't say anything.

Q. All you could see was three or four, maybe five, cars at the most? A. Yes, I saw those cars parked. There was a little garage in to the house; there were cars parked there.

Q. Did you see any cars leave while you were out there? A. I—I don't—I don't pay attention if there was any car leaving. I mean I didn't know, because there was a road there somewhere, and I don't know.

The aforesaid testimony of JOSEPH MAGLIOCCO, as he then and there well knew and believed, was untrue, in that he did know, on November 14, 1957, that he was going to the home of Joseph Barbara, Sr., and that he did not stay outside in his parked automobile.

(Title 18, Section 1621, United States Code.)

## COUNT III

The Grand Jury further charges:

1. That on or about the 29th day of April 1959, at the Southern District of New York and within the jurisdiction of this Court, JOSEPH PROFACI, defendant herein, having duly taken an oath before a competent tribunal, to wit, the Grand Jury of the United States of America, duly impaneled and sworn in and for the United States District Court for the Southern District of New York, and inquiring for that District in a matter then and there pending before said Grand Jury in which the law of the United States authorizes an oath to be administered, that he would testify truly, did unlawfully, knowingly and willfully and contrary to said oath, state material matter which he did not believe to be true, that is to say:

2. At the time and place aforesaid, the said Grand Jury, inquiring as aforesaid, was conducting an investigation, entitled *United States* v. *John Doe,* concerning possible

violations of the law of the United States involved in a meeting held at the home of Joseph Barbara, Sr., in Apalachin, New York, on or about November 14, 1957, as is more fully described in paragraphs 3, 4 and 5 of Count I hereof, the allegations of which relating thereto are incorporated herein.

3. It was material to this investigation to ascertain the purpose of the aforesaid meeting, the names of persons who attended, whether their attendance was planned, and what events occurred thereat.

4. At the time and place aforesaid, the said JOSEPH PROFACI, appearing as a witness under oath, testified falsely before the said Grand Jury with respect to the aforesaid material matter, as follows:

> Q. Mr. Profaci, you recall, I should imagine, a gathering which was held at the home of a Joseph Barbara in Apalachin, New York on November 14, 1957? A. Yes, I remember that.
>
> Q. Let me show you Mr. Barbara's picture so we're sure we're speaking about the same man. I direct your attention to Grand Jury Exhibit 3, page 3. This is the Joseph Barbara of Apalachin, New York. A. Yes, that's right.
>
> Q. You were at his house on the 14th of November, 1957, I believe? A. Yes.
>
> Q. How did you come to be there at that time? A. Well, see, if you permit, I want to explain.
>
> Q. Surely, go right ahead. A. I explain—I've explained after a week. After a week there, I was called and I explained what I want to explain to you if you permit me.

Q. We would certainly like you to tell us why you were there, Mr. Profaci. A. . . . So around about 8:30 or 4 on the 13th my brother-in-law pick me up at home and then we drove another road—he claimed another road, but the day was a bad day, rain, and don't feel good. We driving this way, the other way, and by 8 o'clock, 8:30, something like that, I see it myself, they made a mistake in the road. I recall we stopped at gasoline station and he asked where we are, and instead of go one way, he went another way. I heard that it's near Endicott, we're near Endicott. Go back take a long. When I hear Endicott, I say, "Say, Joe, I recall that Mr. Liberato",—the dead man, that one who die—"he used to see Barbara when he come around Endicott or this vicinity. How about you drove over there, pay a visit." I heard that he's a very sick man. It was explained to me he has a heart operation. Says. "All right, I do. Find out how and where."

So I recall the plant, asked if this—this Barbara has a plant, which he make Canada Dry, whatever they—bottle plant he got. So I called there and he tell me that the man is home sick, which I know he was sick, but he says, "He's home, sick." So he gave me the telephone, fellow who answered the phone, and I called the Barbara home and I told that I down here, "I would like to visit you." He says, "Come over," and they give me direction from where we was before, Binghamton, how to go to his place.

When I started knowing it was Apalachin (pronounced "Apalachia"), was when I called him. A little town they call Apalachin, and I started knowing it was Apalachin. My brother-in-law got my instructions, more or less; we got there on November the

14th. So that's how I went to Apalachin to see—visit Barbara.

Q. What time was it when you arrived there? A. Well, I couldn't remember right, but when I left where it was, it was about 10, 10:30, something like that.

Q. What time did you arrive there? A. I couldn't tell you right, but figure from where it was to the house, take about a little over one hour.

Q. About 11:30, thereabouts, you arrived? A. No, about a little later than that.

Q. Around 12 o'clock? A. No, between 11:30, something like that. I couldn't remember right.

Q. How long did you stay there? A. Not more than a quarter of an hour, if I remember right.

Q. So you left before 1 o'clock? A. I couldn't say right, but I—it wasn't over 1, something like that. I couldn't remember right.

Q. Did you go into the house? A. Yes.

Q. Mr. Magliocco go in with you? A. No, he don't want to get off the car because, you see, rain, dark, and he says, "Let me stay here because, you know, I'm sick. If I got a drink or something, it might be—bother me, so—"

Q. That is your brother-in-law's name, Joseph Magliocco? A. Yes sir.

Q. And he stayed out in the parked car while you went inside? A. He stay in the road, see. The road is down below, and I went in the house.

Q. We've got a picture here, which is Grand Jury Exhibit 26, and I wish you would indicate for us—first I'll ask you, do you recognize this as a picture of Mr. Barbara's home, and his garage, summer house, and the road out here? A. This is the road? This one, huh?

Q. Yes. A. My brother-in-law, he stay here.

Q. Could you put a "P" where you parked the car. Take the pen and mark with a letter "P" where you parked the car. A. This is the house?

Q. That's the house, yes. You recognize the house, don't you? A. I have an idea, but you know—see, my brother-in-law stop here.

Q. Would you mark it with a letter "P". A. Yes.

Q. That's on the right-hand side of the road. A. Coming this way. See, we went out this way, so he says, "I'll turn around," and I find him there when—

Q. You were coming up from the bottom of the picture in the lower right-hand corner? A. Yes.

Q. And up to here, you stopped on the right-hand side of the street on the edge of the picture. A. And that's his house.

Q. Could you put your initials right next to that letter "P" there. Would you please write your initials right below it—"J.P.," whatever you— A. That's it, J.P.

Q. Now, when you parked the car at this point you've indicated on the right-hand edge of the picture, how did you walk into the house from there? A. I don't recall, but I know that I walk into the house.

Q. Which side did you come in, from the far side or the side you can see here in the picture? A. I don't know. It's an entrance in the back there?

Q. I believe there is, but which entrance did you go in through? A. I don't recall. I know I went in.

Q. Now, when you pulled up here in the car and you passed this parking area, which is marked with the letter "E", were there any cars parked out in this parking area? A. Yes, I saw a few cars, yes.

Q. How many? A. I don't recall how many, but about three or four cars.

Q. Did you see any cars anywhere else on the property? A. I don't pay attention.

Q. Did you see many? A. Because I walk in, I stay with him about a quarter of an hour or so, and I walk right out; but I remember I see car.

Q. You saw three or four cars, you say? A. About that.

Q. How many people would you say you saw? A. Well, see, when I went out—when I went out, I see a few people, but I don't pay attention. I go right to see my brother-in-law.

Q. How many people did you see? A. About two or three in—but far away, see.

Q. Over by this fireplace here, over there? A. I couldn't recall.

Q. You don't recall where the people were standing? A. I don't recall. I see a few people, but I walk right out and join my brother-in-law.

Q. How many people did you see? A. I think I saw a few, but—

Q. Could it have been as many as five? A. No, no, I don't see.

Q. Less than five people you saw? A. Oh, sure.

Q. How many people did you see in the house? A. Barbara was alone in the chair, sick, and I saw an old man. He went.

Q. Was an old man in there with him, you say? A. Yes, but he was around, then he went away.

Q. Did he introduce you to the old man? A. No.

Q. Did you see anyone else in the house? A. No, nobody was there. He's in the chair.

Q. Did you talk to anyone while you were there, except to Mr. Barbara? A. No, only Mr. Barbara. I rushed right out because I was so—to take care—I went right out after the quarter of hour. We were talking about sicknesses, trouble, my sickness, his

sickness, the dead man that I told—I notify about the dead man; and I went right out.

Q. Now, from the time you arrived until the time you left, you say the only people you saw were Mr. Barbara and an old man in the house, and a few people— A. Far away.

Q. —less than five, far away. A. Far away, yes.

Q. You saw no one else at any time when you were on the Barbara premises? A. No.

Q. You're certain of that? A. Yes.

The aforesaid testimony of JOSEPH PROFACI, as he then and there well knew and believed, was untrue, in that he did observe more persons and more cars than he stated he saw, and Joseph Magliocco did not stay outside in an automobile.

(Title 18, Section 1621, United States Code.)

## COUNT IV

The Grand Jury further charges:

1. That on or about the 13th day of January 1959, at the Southern District of New York and within the jurisdiction of this court, PASQUALE TURRIGIANO, defendant herein, having duly taken an oath before a competent tribunal, to wit, the Grand Jury of the United States of America, duly impaneled and sworn in and for the United States District Court for the Southern District of New York, and inquiring for that District in a matter then and there pending before said Grand Jury in which the law of the United States authorizes an oath to be administered, that he would testify

truly, did unlawfully, knowingly and willfully and contrary to said oath, state material matter which he did not believe to be true, that is to say:

2. That, at the time and place aforesaid, the said Grand Jury, inquiring as aforesaid, was conducting an investigation concerning possible violations of the laws of the United States involved in a meeting, and the circumstances surrounding that meeting, held at the home of Joseph Barbara, Sr., in Apalachin, New York, on or about November 14, 1957, as is more fully described in paragraphs 3, 4 and 5 of Count I hereof, the allegations of which relating thereto are incorporated herein.

3. It was material to this investigation, in determining the circumstances surrounding the aforesaid meeting, to ascertain the names of the persons who were present at the home of Joseph Barbara, Sr., on November 13, 1957, the day prior to the aforesaid meeting, what events occurred thereat, what was discussed, and what the purpose of their presence was.

4. At the time and place aforesaid, the said PASQUALE TURRIGIANO, appearing as a witness under oath, testified falsely before the said Grand Jury with respect to the aforesaid material matter by stating that no one was present at the Barbara residence between approximately 2:00 PM and 10:00 PM on November 13, 1957 except himself, the Barbara family and Melvin Blossom, as follows:

Q. From the time that you entered the house until the time that you finished eating, was Joseph Barbara with you every moment? A. Yeah, he was there.

Q. Did he leave the kitchen for any reason? A. No. We sat down to watch TV.

Q. But he didn't leave the room for any reason before? A. No. He was there all the time.

• • •

Q. And he was with you all the time? A. That's right.

Q. In your sight every minute? A. That's right.

• • •

Q. Well, you started to watch television at approximately six o'clock, is that right? A. More or less.

Q. Approximately? A. That's right.

Q. Did you watch television from approximately six to approximately ten o'clock? A. That's right.

Q. Was Joseph Barbara, Sr., in the same room with you all the time? A. Yes.

• • •

Q. Was there anybody else in the living room between six and ten o'clock in the evening of November 13, 1957? A. Nobody.

Q. Did you see anybody else around the premises on that day, aside from the people that we have already discussed? A. There was the farmer over there, the one that took care of the place.

• • •

Q. Did you see anybody else there? A. No, sir.

Q. All the time, between approximately two o'clock, when you arrived, and approximately ten o'clock when you left, you saw nobody else there except Joseph Barbara, Senior and Junior, Angie, Melvin Blossom and Mrs. Barbara, is that correct? A. That's right.

The aforesaid testimony of PASQUALE TURRIGIANO, as he then and there well knew and believed, was untrue, in that other persons were present at the Barbara residence between approximately 2:00 P.M and 10:00 PM on November 13, 1957.

(Title 18, Section 1621, United States Code.)

.....

Foreman

.....

ARTHUR H. CHRISTY
United States Attorney

.....

MILTON R. WESSEL
Special Assistant to the Attorney General